IN THE HIGH COURT OF JUDIATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7274 OF 2003

Dnyanu Pandurang Desai & Ors. .. Petitioners.
Vs.
The State of Maharashtra & Ors. .. Respondents.

Mr.N.J.Patil for the petitioners.

CORAM : D.B.BHOSALE, J.

DATED : 2ND MAY, 2005

P.C.:

. Heard Mr.Patil, learned counsel for the petitioners.

2. This petition challenges the order dated 2.7.2002 passed by the Commissioner in the application filed by the petitioner under section 48(1) of the Land Acquisition Act, 1894 (for short "the Act"). It appears that the petitioner had earlier challenged the acquisition by way of writ petition No.4796 of 2000. The Division Bench had disposed of the said writ petition by the following order:

> "1. Petition is allowed to be withdrawn with liberty to approach the Commissioner under section 48(i) of the Land Acquisition

> Act for appropriate reliefs. If the application is made within two weeks from today under the above section the Additional Commissioner is directed to decide the same on merits within a period of four weeks from the date of application. Till the application is decided the petitioner not to be dispossessed from the notified land. If the application is not made within the specified period, the respondents are at liberty to take possession of the land.
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> 2. Petition is disposed of in the terms mentioned above".

. In pursuance of the aforesaid order the application under section 48(1) of the Act was filed by the petitioners which came to be rejected by the impugned order. Mr.Patil, learned counsel for the petitioners at the outset placed reliance upon the order passed by the Apex Court dated 1.12.1998 passed in Civil Appeal No.11809 of 1995 by which several appeals were disposed of. Mr.Patil submitted that in any case grass land (Gawat Pad) ought to have been deleted from the holding of the petitioners while calculating their total holding and fixing the slab for the purposes of acquisition. He next submitted that the partition of the properties was also not taken into account. I have perused the order of the Apex Court dated 1.12.1998. In my opinion, that order has no application to the facts of the present case. Firstly, because on a query made from

Mr.Patil, learned counsel for the petitioners, he submitted that the petitioners are not relying on any of the circulars referred to in the order of the Apex Court dated 1.12.1998. And, secondly, the circulars referred to therein have been withdrawn by the State Government. The order of the Apex Court, therefore, will not help the petitioners in the present case. The case of the petitioner, though, need not be examined in view of the disputed questions of fact, the petitioner has not produced any evidence, worth considering, in support of their contention. In so far as the submission of Mr.Patil that grass land cannot be taken into account for calculating total holding of the land while fixing the slab also deserves to be rejected on two grounds. Firstly, it is a disputed question of fact and secondly, that is not the scope of an enquiry under section 48(1) of the Act. Section 48(1) gives liberty to the Government to withdraw from the acquisition of any land of which possession has not been taken. Though in the present case the petitioners claim that they are in possession of the land under acquisition, according to the State the possession of the petitioner's land has already been taken and, therefore, it is not open for the petitioner to take recourse to the provisions contained in section 48(1)

of the Act. Even if it is assumed that the petitioners are still in physical possession of the land in dispute and have lost its possession only on paper still, in my opinion, the petitioners cannot challenge the acquisition on the grounds mentioned above in the proceedings under section 48(1) of the Act. Admittedly, all the contentions raised in this petition were interalia raised in the aforestated writ petition before the Division Bench and that petition was withdrawn with a liberty to approach the Commissioner for withdrawal from the acquisition of the petitioners' land. The petitioners, in my view, were not given liberty to challenge acquisition of their land in the proceedings under section 48(1). If a litigant, such as the petitioners, is allowed to challenge the acquisition of his land under section 48(1) the process of acquisition would become endless and the very purpose of acquisition would be frustrated. The purpose of acquisition in the present case was for resettlement of the project displaced persons. The writ petition, therefore fails and is dismissed as such.

(D.B.Bhosale, J.)